

In the Matter of Merchant Mariner's Document No. 49844-D2 and all
other Seaman's Documents
Issued to: GLENDALE P. NASH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1473

GLENDALE P. NASH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulation 137.30-1.

By order dated 19 May 1964, an Examiner of the United States Coast Guard at Washington, California suspended Appellant's seaman's document for six months outright plus six months on twelve months' document for six months outright plus six months on twelve months' probation upon finding him guilty of the charge of misconduct, predicted, upon two specifications. The first specification found proved, alleges that while serving as a wiper on board the United States SS JAVA MAIL under authority of the document above described, on or about 6, 9, 20 and 23 March 1964 and 8, 9, 22 April 1964 he wrongfully failed to perform his regularly assigned duties. The second specification found proved, alleges that while so serving on or about 18 May 1964, he verbally abused and threatened a commissioned officer of the U. S. Coast Guard who was in the performance of his duty as a U. S. Shipping Commissioner.

At the hearing, Appellant elected to act as his own counsel. He entered a plea of guilty to the charge and to each of the two specifications. Despite the guilty pleas the Investigating Officer introduced in evidence an extract of the articles, pertinent logbook entries the testimony of the vessel's master and purser.

In defense Appellant made a statement not under oath.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and two specifications had been proved by plea. The Examiner then served a written order on Appellant suspending all documents, issued to the Appellant, for a period of six months outright plus six months on twelve months' probation.

The entire decision was served on 9 June 1964. Appeal was timely filed on 16 June 1964.

FINDINGS OF FACT

Between the period of 12 February 1964 and 18 May 1964 Appellant was serving as a wiper aboard the United States SS JAVA MAIL and was acting thereon under authority of his Merchant Mariner's Document while the ship was on a foreign voyage.

On 6 March 1964 while at sea on route Hong Kong to San Fernando, 9 March 1964 while the vessel was at Manila, P.I., 20 March 1964 while the vessel was at Cochin, 23 March 1964 en route Cochin to Madras, on 8 and 9 April 1964 at Calcutta, 22 April 1964 at Singapore and on 23 April 1964 en route Singapore to Saigon, Appellant failed to perform his regularly assigned duties between the hours of 0800 to 1200 and 1300 to 1700.

On 18 May 1964 at about 1530 hours while the vessel was in the Port of Los Angeles, Appellant directed verbal abuse and threats to Chief Ship's Clerk G.T. Blundell USCG who was then and there in the performance of his duties as a U. S. Shipping Commissioner engaged in "paying off" the crew.

The Shipping Commissioner refused to permit Appellant to sign off the articles because Appellant was under the influence of intoxicants. As a result, the latter became angry. He called the Shipping Commissioner an S.O.B. and other foul words and inquired if he was a lieutenant or a captain. Shortly thereafter Appellant said he had and he was going to get the gun and "get" the Shipping Commissioner.

This appeal has been taken from the order imposed by the Examiner. Acting in his own behalf, Appellant urges that family troubles during the preceding two years had affected his thinking and by reason of being under the influence (of intoxicants) he acted as he did. He also states that he never owned a gun. Finally he requests leniency.

OPINION

The record does not reflect that improvident pleas were made and all allegations of the Investigating Officer appear well supported in fact. While the specifications could have been more artfully drawn they set forth the facts which form the basis of the charge. Appellant's contention that he was harried by a matrimonial problem is considered an inadequate excuse for his having indulged excessively in intoxicants on eight separate days in the course of the voyage. His failure to perform his duties thereby, placed an additional burden on his fellow crew members to continue the vessel safely on its voyage.

~

With respect to the incident on 18 May 1964, there is evidence concerning Appellant having been "drunk" as testified to by the master and as "severely under the influence of intoxicating liquors" as testified to by the purser. This raises the question as to Appellant's mental capacity to recognize the object of his denunciation as an individual engaged in official duties as the Shipping Commissioner. Any doubt is dispelled, however, by testimony which recited the seaman's query to the Shipping Commissioner as to whether he was a lieutenant or a captain since it shows his comprehension of the officer's affiliation. It is also clear from the record that Appellant was cognizant that the crew was signing off the articles. I am therefore satisfied that he recognized the capacity in which the officer was acting aboard the vessel as that of Shipping Commissioner.

Appellant's contention on appeal that he never owned a gun is not persuasive since he offered no reason to believe that those within his hearing were aware of this.

A threat is a declaration of one's purpose or intention to work injury to the person of another with a view of restraining such person's freedom of action (Black's Law Dictionary). A threat is an avowed present determination to injure presently or in the future, United States v. Metzdorf, 252 Fed. 933 (E.D. Mich. 1918), and even the fact that it is made conditional upon the ability of the defendant to carry it out does not render it any the less a threat. United States v. Jasick, 252 Fed. 931 (D. Montana 1918).

CONCLUSION

The record indicates no reason to disturb the order of the Examiner nor does the appeal provide adequate extenuating grounds to do so. A convincing excuse would be required by me in view of the many failures of the seaman to preform his assigned duties and the serious abuse of the Shipping Commissioner who had made a wise judgement designed solely to protect this very Appellant. None has been presented.

ORDER

The order of the Examiner dated at Washington, California, on 19 May 1964, is AFFIRMED.

P. E. Trimble
Rear Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of October 1964.

INDEX

ABUSIVE LANGUAGE

To a Coast Guard officer, use of

DECISIONS OF EXAMINERS

Oral

FAILURE TO PERFORM DUTIES

Offenses of

LANGUAGE

abusive, use of

SHIPPING COMMISSIONER

use of abusive language towards
threatening of (view)

THREATS

conditional
defined